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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

REPLY COMMENTS OF PINPOINT COMMUNICATIONS, INC.

Pinpoint Communications, Inc. ("Pinpoint") by its attorneys, hereby replies to certain comments filed in the above-captioned proceeding. Pinpoint will limit its reply to the comments addressing the issue of whether competitive bidding under Section 309(j) of the Communications Act¹ should extend to the licensing of wide-area automatic vehicle monitoring ("AVM")² systems, specifically those filed by PacTel Corporation ("PacTel") and Southwestern Bell Corporation ("SWBell").

As an initial matter, Pinpoint supports the Commission's intent to delay action on the applicability of competitive bidding to AVM "because certain fundamental questions about the nature of this service are now being considered in [PR

¹ 47 U.S.C. § 309(j).

² "Wide-area" AVM systems are those employing multilateration technologies over ranges of hundreds of yards to several miles, with coverage typically of entire metropolitan areas.

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Docket 93-61]."³ Pinpoint, designer and developer of the ARRAY™ network technology, the first wide-area radiolocation system to integrate vehicle location and related data communications into a single radio system, has asked the FCC, in PR Docket 93-16, to continue to license all AVM systems on a shared basis as it has done under the interim rules.⁴ Competitive bidding for AVM will not even be an issue if the Commission determines to do so. However, certain parties that have urged the FCC in Docket 93-61 to adopt sub-bands in the 902-928 MHz band solely for wide-area AVM use, and to license wide-area AVM systems on an exclusive basis therein, contend in this proceeding that competitive bidding should not apply to such licensing. Pinpoint disagrees and offers the following reply comments.

I. ARGUMENT

In PR Docket 93-61, Pinpoint proposed that the Commission license all AVM systems, both local-area and wide-area, on a shared-use basis throughout the 902-928 MHz band. 47 C.F.R. § 93.209. Pinpoint submits that the record in that

³ Implementation of Section 309(j) of the Communications Act Competitive Bidding, PR Docket 93-253, FCC 93-455 (October 12, 1993) ¶145 n.153 ("Notice").

⁴ While urging the FCC to continue with its shared spectrum approach to AVM licensing in the 902-928 MHz band, Pinpoint has advocated a different band plan from that proposed by the Commission in PR Docket 93-61.

proceeding supports the adoption of such a band plan.

However, should the Commission determine to allocate separate sub-bands for local-area and wide-area AVM systems, and to license wide-area systems on an exclusive basis within their respective sub-bands -- as SWBell and PacTel propose -- the licensing of wide-area AVM systems should be through a competitive bidding process.

PacTel and SWBell argue to the contrary. Pinpoint submits that their positions run counter to Section 309(j) of the Communications Act. The central argument for both parties is that competitive bidding would not apply in the event the FCC were to license one wide-area system per sub-band, per market because AVM operations will remain secondary to government radiolocation facilities and industrial, scientific and medical ("ISM") devices. The key premise of their argument, therefore, appears to be that, because wide-area AVM systems will have to tolerate interference from other uses of the band, competitive bidding is not authorized. See Comments of PacTel, PP Docket No. 93-253 (filed November 10, 1993) at 12; Comments of SWBell, PP Docket No. 93-253 (filed November 10, 1993) at 14.

Nothing in the statute nor the Commission's Notice supports this interpretation of Section 309(j). The critical inquiry is not whether there will be exclusivity in the "pure" sense that PacTel and SWBell suggest, but whether

"mutually exclusive applications [will be] accepted for filing." 47 U.S.C. § 309(j)(1); see also Notice, ¶ 22. If the licensing scheme proposed by either PacTel or SWBell is adopted (only one AVM system per market in each wide-area-only sub-band), there will be the distinct potential for mutually exclusive applications accepted for filing, the secondary status of AVM relative to the government and ISM notwithstanding. Thus, the threshold criterion of Section 309(j) will be met under the licensing schemes proposed by these commenters.

The second criterion of the statute is whether the "principal use" of the spectrum by the licensees "will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers" in return for communications services provided over the spectrum being licensed. 47 U.S.C. § 309(j)(2). Wide-area AVM systems likely will involve the "provision of service to subscribers for compensation." In an attempt to divert the agency's attention, PacTel asserts that the principal use of the band will not be for the provision of services to subscribers because the allocation to government radiolocation is primary relative to AVM, obviating the applicability of competitive bidding.⁵

⁵ SWBell merely notes that the spectrum will not be used "exclusively" for the provision of services to
(continued...)

This assertion is beside the point. In reality, Section 309(j)(3) of the Act speaks of "principal use" in terms of regulatorily defined classes of licenses and permits. Concomitantly, the Commission has proposed that the proper inquiry to determine the applicability of competitive bidding is whether the "principal use of a service or class of service," e.g., wide-area AVM under the discussion here, would be for services with paying subscribers. Notice, ¶ 32. Thus, the primary status of government radiolocation -- which is not regulated by Commission licensing -- relative to AVM would be irrelevant to the determination of whether the exclusive licensing by the FCC of wide-area AVM systems should be subject to competitive bidding. In other words, the appropriate question is whether the "principal use" by wide-area AVM licensees is, or is reasonably likely to be, for the provision of service to paying subscribers. The answer probably is "yes".

Moreover, even if government radiolocation were to be considered with wide-area AVM for these purposes, it is Pinpoint's understanding that the government has not made extensive use of this band.⁶ Accordingly, it is "reasonably

⁵(...continued)
subscribers. Comments of SWBell at 14. However, "principal use", not "exclusive use", is the test, as explained earlier.

⁶ If the government had made extensive use of the band, it is extremely unlikely that PacTel or SWBell would be
(continued...)

likely" that the "principal use" of any wide-area-only sub-bands would be by paying subscribers, thereby making competitive bidding applicable to AVM.⁷

In short, should the Commission adopt exclusive licensing, as that term is generally understood, for wide-area AVM systems in the 902-928 MHz band, such licensing should be subject to competitive bidding whenever there are mutually exclusive applications. However, Pinpoint reiterates its initial position herein that resolution of these issues would be better deferred until after the FCC completes its AVM rulemaking in PR Docket 93-61. Further, it remains Pinpoint's firm conviction that the public interest would be best served if AVM licenses were granted to wide-area and local-area AVM systems on a shared basis throughout the 902-928 MHz band.⁸ Nothing herein is meant to suggest otherwise.

⁶(...continued)
so interested in the spectrum given their contentions in Docket 93-61 concerning their need for exclusive access relative to all other users of 902-928 MHz.

⁷ In the unlikely event that the Commission were to determine that government radiolocation should be considered with wide-area AVM to determine "principal use," the FCC cannot, on the current record in this proceeding or Docket 93-61, conclude that the principal use of the spectrum is not for paying subscribers.

⁸ As Pinpoint has explained in PR Docket 93-61, multiple wide-area AVM systems can efficiently share the same spectrum on a time division multiple access basis. Further, wide-area systems can share with local-area AVM operations through antenna power and height management. See generally, Comments of Pinpoint, PR Docket No. 93-61 (filed June 29, (continued...))

II. CONCLUSION

For the foregoing reasons, the Commission should defer consideration of the applicability of Section 309(j) of the Communications Act to AVM until after the completion of Docket 93-61. However, in the event that the Commission determines in PR Docket 93-61 to license wide-area only systems in separate sub-bands and on an exclusive basis, as proposed by PacTel and SWBell, such licensing should be pursuant to competitive bidding. In the event the FCC adopts Pinpoint's proposal in PR Docket 93-61 that all AVM licensing be on a shared basis, competitive bidding should not be utilized.

Respectfully submitted,

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⁸(...continued)
1993); Reply Comments of Pinpoint, PR Docket No. 93-61 (filed July 29, 1993).

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 1993, I caused copies of the foregoing "Reply Comments of Pinpoint Communications, Inc." to be mailed via first-class postage prepaid mail to the following:

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